

Press Release 21/2019

Infringement of Competition law will enable access to smartphones, tablets and cloud servers

The draft legislation for the transposition of the ECN+ EU Directive explicitly foresees that the Portuguese Competition Authority (Autoridade da Concorrência, AdC) may access any technological device, including smartphones, tablets or cloud servers to seize evidence of competition infringements.

The AdC launched a public consultation on this draft legislation for the transposition of the Directive 2019/01/EU which empowers the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

Therefore, this Directive has the objective of ensuring that national competition authorities have the guarantees of independence, resources, and enforcement and fining powers necessary to apply EU competition rules effectively.

In addition to the adaptation to the digital environment, the Directive makes it easier to enforce fines imposed on companies with no physical presence in Portugal. It also clarifies the possibility of finding parent companies liable for infringements of competition rules by their subsidiaries, by applying the notion of undertaking used in EU jurisprudence.

The ECN+ Directive was published in the Official Journal of the European Union on 14 January 2019, and must be transposed into national law by 4 February 2021.

The AdC believes that an open, transparent and inclusive implementation procedure, with the involvement of the various stakeholders, will bring about a legislative proposal of higher quality and, therefore, contribute to a wider and more effective promotion of a culture of competition in Portugal.

In addition to this public consultation, the AdC set up an external working group to work as “sounding board” of the ongoing legislative work, and organized a consultative workshop covering this topic involving the participation of representatives of various stakeholders.

The public enforcement of Articles 101 and 102 TFEU is carried out by the national competition authorities of the Member States in parallel to the Commission pursuant to Council Regulation (EC) No 1/2003.

However, sometimes national law undermines the ability of national competition authorities to effectively apply Articles 101 and 102 TFEU and to apply national competition law in parallel to Articles 101 and 102 TFEU. In jurisdictions where the effectiveness of competition law is lower, for example given the challenges that national competition authorities have in finding evidence of the infringement or in the swift imposition of dissuasive fines, there is a tendency for creating a sense of impunity which harms in particular the consumers and companies of those Member States.

All interested parties should send their written comments by 26 December 2019 to the consultapublica@concorrencia.pt email address, quoting "Public consultation on the draft transposition of ECN+ Directive " or to the postal address: Av . Berna, 19, 1050-037 , with the same reference.



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